



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 13, 1995

Ms. Melissa Winblood
Assistant City Attorney
Office of the City Attorney
City of El Paso
2 Civic Center Plaza
El Paso, Texas 79901-1196

OR95-585

Dear Ms. Winblood:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 23307.

The City of El Paso (the "city") received a request for emergency medical service ("EMS") records concerning a deceased patient. The requestor has provided an authorization to release medical records which is signed by an individual claiming to be the legal representative of the deceased.

You have provided copies of the requested documents and argue that the information is excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 773.091 of the Texas Health and Safety Code.

Section 552.101 of the Government Code excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 773.091(b) of the Health and Safety Code provides in pertinent part:

Records of the identity, evaluation, or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.

However, the Emergency Medical Services Act also provides under section 773.092(e):

Communications and records that are confidential under this section may be disclosed to:

....

(4) any person who bears a written consent of the patient or other persons authorized to act on the patient's behalf for the release of confidential information as provided by Section 773.093.

Section 773.093, regarding consent, provides the following:

(a) Consent for the release of confidential information must be in writing and signed by the patient . . . or a *personal representative* if the patient is deceased. [Emphasis added.]

You assert that an individual claiming to be the personal representative of the deceased must supply copies of letters testamentary or of administration in conjunction with section 3(aa) of the Texas Probate Code to prove his status as representative. However, section 773.091 of the Health and Safety Code does not define the term "personal representative." Moreover, section 773.091 does not require proof that a party authorizing release of records is in fact a personal representative of the deceased.

In a recent decision, Open Records Decision No. 632 (1995), we concluded that the term "personal representative" as used in section 773.093 of the Health and Safety Code, signifies "personal representative" as defined in section 3(aa) of the Probate Code. However, the Probate Code does not necessarily require that all personal representatives bear letters testamentary or of administration. Open Records Decision No. 632 (1995) at 4. Thus, you may *accept*, but may not *require* letters of testamentary or of administration as a means of establishing the status of an individual as personal representative of the deceased. *Id.* In this case, the requestor, an attorney representing the spouse and children of the deceased, has provided an authorization for release of EMS records signed by the spouse who claims to be the legal representative of the deceased. We believe this is sufficient proof of the spouse's personal representative status as provided by section 773.093(a) of the Health and Safety Code.¹ *See also* Open Records

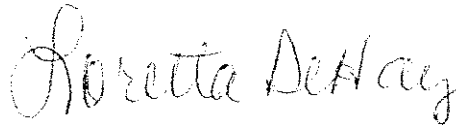
¹The requestor asserts that section 4.01(e) of the Medical Liability and Insurance Improvement Act applies to the requested information. You disagree, because in this instance there is no notice of a medical liability claim. *See* V.T.C.S. art. 4590i, § 4.01 (establishing procedure for obtaining medical records relating to claims of medical liability). Section 4.01(e) provides that:

notwithstanding Section 5.08, Medical Practices Act . . . or any other law, a request for medical records of a deceased person or person who is incompetent shall be deemed to be valid if accompanied by an authorization signed by a parent, spouse or adult child of the deceased or incompetent person.

Decision No. 598 (1991) (assuming without information to contrary that deceased's widow is his personal representative for purposes of Medical Practice Act and Health & Safety Code provisions). Therefore, you must release the information.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay
Assistant Attorney General
Open Government Section

LRD/LMM/rho

Ref.: ID# 23307

Enclosures: Submitted documents

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(Footnote continued)

Id. § 4.01(e). We agree with your conclusion that this provision applies only to claims of medical liability. However, this provision does lend support to our conclusion that you may not require letters testamentary or of administration in order to release the EMS records in this instance.